

ZONING BOARD OF APPEALS

The hearing on Tuesday, July 1, 2025, is called to order by Chairman Kwiek at 7:03 pm.

Members Present:	Harry Kwiek	Absent:	Shawn Pralow
	Greg Kalinowski		Jim Lembke, Alternate
	Ron Carey		
	John Jimenez		
	Robert Schafer, Alternate		
Also:	Phyllis Todoro, Town Atty.		
	Ray Balcerzak, Building Inspector		

Appeals Case #1481 for Christopher Burg of 2323 Woodard Road, Elma, NY, who is requesting a variance to build a pole barn thirteen (13) feet from the neighboring property line §144-98 C4, Residential B.

Mr. Burg returned from the previous hearing on April 1, 2025, and May 6, 2025. He is requesting the variance change from the last requested from 10' to 13'.

Mr. Carey appreciated the effort to adjust the variance, but it is still substantial for 13' instead of the required 20'.

Mr. Carey asked about hardship.

Mr. Burg described the hardship of backing in the trailer.

Mr. Carey explained a hardship is something unique, not shared with neighbors; swamp land, nature of the land, a creek running through the property, etc. There is no hardship seen.

Suggested he could move the pole barn back and the 10' angle would be reduced. There is case law saying that a person's desires or design are not a true hardship. The citizens said they did not want overcrowding, overbuilding, or want us to turn into a small lot suburb, like other towns.

Mr. Burg mentioned there was 40-50' of dirt access road next to his property, and if he would be able to use it. Does not think it would ever be used.

Mr. Cary replied that he does not know whether the land will be developed in the future. If we were to give the variance to one but not the other, we would be looked at as arbitrary and capricious.

Mr. Cary asked Mr. Burg what was his reason for building near the neighbor's property line?

Mr. Burg replied that he did not want to build where his children's play set is set up.

Mr. Jimenez questioned whether there had to be some space there. He did not believe it was a true hardship. Questioned if the garage could be moved another 7'.

Mr. Schafer mentioned he drove past the property and believes that it can be done.

Mr. Burg replied that it would be an eyesore in the middle of the yard. It would ruin resale value.

Mr. Carey said that Mr. Burg saying that it was an eyesore is nitpicking, 7' out of 20' is substantial.

Mr. Kwiek asked if he knew the code. Mr. Burg answered yes.

Mr. Kalinowski agreed with Mr. Carey that there is no reason it cannot be changed to comply with the code, so the pole barn could be built.

No one spoke in favor or against the variance.

Mr. Kalinowski made the motion for Appeals Case #1481 for Christopher Burg of 2323 Woodard Road, Elma, NY, who is requesting a variance to build a pole barn thirteen (13) feet from the neighboring property line §144-98 C4, Residential B, to be denied.

1. This request can be achieved in other ways that were suggested for backing in the trailer.
2. There is an undesirable change in the neighborhood, would have to have a 20' setback.
3. The request is substantial; pole barns were not accepted previously in the area.
4. Adverse, not necessarily physical, but this particular area does not need a structure of this size so close to the property line.
5. The action is self-created. It was brought on by Mr. Burg's plan on storing equipment and a boat.

Second: Mr. Schafer

Yes: 5. Nays: 0

Appeals Case #1482 for James and Lisa Buettner of 921 N. Star Road, East Aurora, NY, who is requesting a variance to sell a plot of land on Seneca St., which creates a non-conforming lot on N. Star. §100-3 C1, Residential C.

Mr. Kalinowski asked the Buettner's for the history of the property.

Mrs. Buettner replied it was owned by her uncle.

Mr. Buettner explained that $\frac{3}{4}$ of the driveway is on their property. Since the uncle passed away, they could not afford to purchase his house. Since they live on the next property, they do not want liability with the new residents. They would like that piece of property to be removed from their deed.

Mrs. Buettner explained they built on N. Star and had an extra 100' behind the uncle's property on Seneca Street.

Mr. Jimenez asked if the lot that was built on Seneca Street has the plot of land in question and if they still own it?

Mrs. Buettner answered correct, N Star is 15-20' of trees and there is no access and no way for the Buettner's to know if they are using the driveway or are too close to it.

Mr. Jimenez described the new owner's driveway as being on Buettner's property.

Mrs. Buettner said it is "rainbow" shaped, and they own both entrances to the driveway.

Mr. Jimenez questioned if they were to remove that piece of land, it would make their property non-conforming, not a normal practice in Elma to create non-conforming lots. Asked what the hardship is?

Mrs. Buettner replied it was the liability of the tenant/landlord using their property.

Mr. Jimenez asked if there was another right-of-way on the property for them to use their land or if there was an existing legal document allowing them to use the driveway.

Mr. and Mrs. Buettner both replied no.

Ms. Todoro asked how they got a new mortgage without access to an entrance.

Mr. Kalinowski stated it was an encumbrance, it doesn't have a full title and if it had any sort of easements like that.

Buettner's were not sure how they got their mortgage.

Mr. Carey mentioned they wanted to build on N. Star. In 2014 the Town of Elma banned any flag property, and N. Star at the time was laid out as a flag property. The only way they could build to get sufficient frontage was to purchase the land on Seneca Street. And now they want to reverse that, which would make N. Star a non-conforming flag lot again. Asked if there were any other alternatives, buy more property on N. Star? On the application variance 100-3 four split rule and it is understood that four splits have already been made. Under that code, you would need 150' of frontage in order for the lot to be conforming. Under Residential C, you would only need a 100' but the property does not have that either. Trying to reverse what was done 2-3 years ago is bringing on the problem themselves and that is what is termed "self-created" hardship.

Mr. Schafer stated that it is a non-conforming lot and it would result as a flag lot; it was known when they were going to build in the lot.

Mrs. Buettner mentioned that Joe Colern from the Building Dept. suggested they buy the additional property on Seneca Street. They intended to keep both properties in the family, but since the uncle passed away unexpectedly, they had to sell his property.

Mr. Kalinowski said they have heard similar stories of unexpected deaths, and there was never foresight, and they are now asking for leniency. But the code is followed, and flag lots, which would be created in the situation would be revoked.

Mr. Jimenez remarked: In our town, the comprehensive plan is to make sure that houses are being built to fit within a certain parameter. It is not for the uniformity; it is so neighbors are not staring into each other's homes. It looks like it would create a flag lot property. Mr. Jimenez asked if it was 5 acres that they would be able to access. Mr. Shaw replied Yes. Mr. Jimenez said the issue is with the width of the front portion. He is concerned about the issue it may create with the neighbors.

Mr. Shaw said the properties would have two separate accesses. They would be two separate tax id parcels; in case the property is sold in the future. Both parcels would be in code.

Mr. Carey said 125' is required frontage, it is not just the driveway but the entire frontage. Mr. Koutsandreas is asking for 95' frontage, which is considerably less than the required 125', and that is substantial. Where is the hardship?

Mr. Shaw replied if Mr. Koutsandreas wants to sell any part of property, it would be unsellable.

Mr. Carey added that Mr. Koutsandreas created that problem when the lot of 250' was not split evenly and built in the middle of the lot. It was built similarly to it being on a flag lot.

Mr. Schafer added that Mr. Koutsandreas bought property and should have been aware of the measurements of the frontage and dimensions to the back of the property. Building on this parcel is not possible; it would become a flag lot.

Mr. Kalinowski (looking at plans) mentioned it would not be workable and not in code. Flag lots are no longer permissible. This is a self-created hardship. Not looking favorably.

Mr. Kwiek said 95' is a considerable variance, it is an issue and does not fit into the neighborhood. The lots in the area are wider, no less than 100, which is not comparable with other properties to split the lot later. Buying the property and then wanting to split it later is self-created.

No one spoke in favor of the variance.

Against the variance was the following:

James Corligiano of 6310 Clinton Street: Mr. Koutsandreas wants to put in a driveway at 25'. Started to build the driveway and the drainage, it is going into the neighbor's property. The driveway Mr. Koutsandreas is building is right up to the line of his driveway. (Showed pictures of before and after of the land and tree lines). Mr. Corligiano also mentioned the garbage piles in the rear, it is filled with waste from Mr. Koutsandreas' work: pallets, bricks, and tires for fill.

Mr. Kwiek suggested taking up those issues with the Building Dept.

Ms. Lisa Pielaszkievicz of 6321 Clinton Street: Lives across the street. When Mr. Koutsandreas put in the driveway, it was loud, and she believed it was to create a flag lot since it has nothing to do with the existing house.

Alex Cornwall of 6300 Clinton Street: Attempting to connect the driveway to flag lot. In 12 years, Mr. Cornwall had no issue with water until the equipment came in at Mr. Koutsandreas' property. That has left Mr. Cornwall's property wet, and he had to pay for a professional drainage company to fix the problem. Mr. Cornwall also mentioned the trash buildup and the view destroyed. He believes that hydraulic fluid contamination is possible. The view from the back of the home has changed with Mr. Koutsandreas' lights.

Mr. Jimenez made the motion for Appeals Case #1483 for Milton Koutsandreas of 6350 Clinton Street, Elma, NY, who is requesting a variance to split property to create a parcel with the frontage to measure approximately ninety-five (95) feet wide. §144-98 C1, Residential B that requires a minimum of 125' motion to be denied.

1. To allow a variance to create a non-conforming lot with less than 125' frontage will have a detriment to nearby properties from granting this variance. An undesirable change would be known, creating a non-conforming lot.

2. The benefit sought by the applicant to allow less than the required footage, which is constrained by code, could not be achieved by any other way.
3. The requested variance is significant. It does not meet Elma's comprehensive plan.
4. The requested variance will have an adverse effect or impact in the physical or environmental conditions in the neighborhood. Allowing the owner to sell off this land will create a potential hazard to health, safety and the general welfare of the neighborhood.
5. The hardship is self-created because the owner is looking to sell off land and create a non-conforming lot with the existing home to the extent the applicant wishes for a variance less than the required frontage.

Second: Mr. Schafer

Yes: 5. Nays: 0

Denied

Appeals Case #1484 for Michael Smith of 1710 Girdle Road, Elma, NY, who is requesting a ten (10) foot side setback to construct a garage from the required twenty (20) feet. §144-98 C4, Residential B.

Mr. Smith built a home in 2023. He was told by the builder that they had a 10' variance, opposed to 20'. The septic should have been in the front of the house, not the back. He is requesting a small pole barn/ garage and a pool. The contract is ready if approved. He is requesting 10' to the rear and 10' over; it would be pushed back so it is not in the neighbor's space.

Mr. Kwiek asked if the issues were created because of the position of the septic.

Mr. Smith answered yes and mentioned issues with the builder. Hard to get a response.

Mr. Kwiek thought he was putting a structure on a 125' lot, that the building 34' x 40' planned, is large.

Mr. Smith mentioned he could have built a covered patio but did not do that so a pole barn could be built.

Mr. Kwiek has concerns of the size of the property versus what he wants to build on it.

Mr. Carey reminded that a hardship would be the lay of the land is what governs that, something unique, something properties on Rice Road or Girdle Road do not share. He does not see a problem with the land. A problem with the builder is not a hardship. Asked if it could be accomplished another way. Could he downsize the garage to a 2-car, not a 3-4 car? Move the pool over from the septic? That would pick up more space from the septic. Mr. Carey thinks that he is asking too much for the lot size.

Mr. Smith mentioned he would need space for storage and a patio.

Mr. Carey said that new builds are being built too large for the lots they are on. Asked if they could change the plan and possibly build a pool house and make the pool smaller. The Town needs to consult and uphold the code, which is not possible with Mr. Smith's design. He must build in the confines and not ask for variance.

Mr. Smith said he understood.

Mr. Jimenez asked about the septic system. The code states the septic must be at least 10 feet from structures.

Mr. Balcerzak replied the septic system must be 10' away from the structure for maintenance.

Mr. Jimenez asked if it can be achieved on only 3 sides of the structure and does not need to be all not all 4?

Mr. Balcerzak asked if they could get a machine to the back of the house.

Mr. Jimenez replied that 20' should be enough to get back. Asked if pool could be moved over?

Mr. Balcerzak mentioned that an inground pool would not be recommended because a 3' sidewalk and a fence barrier would be needed, and there is not enough space to accommodate.

Mr. Smith replied that the pool design is connected to the pole barn design. Asked if the excavator could get behind 20', would that be okay?

Mr. Carey mentioned that if he were to downsize the garage, it would open up space.

Mr. Smith replied not ideal and understands the idea.

Mr. Jimenez asked about the size of the pole barn.

Mr. Smith replied that it was 24 wide with a 10' overhang. That is the ideal size for children to play in and for their storage, but it could be made smaller. However, the current plans are for future storage and other ideas.

Mr. Schafer believes the pool needs to be situated in a different position.

Mr. Smith answered it could be twisted a little bit. The idea of the patio size is for entertainment and function. Would like to have the driveway and pole barn symmetrical. It is all designed so you can see the pool.

Mr. Shafer cannot see that the design will be done exactly that way.

Mr. Smith replied it would be hard to see what is going on in the pool if it were turned another direction.

Mr. Kalinowski believes it is workable if flexible on tweaking plans. The hardship is self-created because of the septic. He believes cutting down the size of the patio would remove need for variance.

Mr. Smith said there is an existing gas fireplace, and it would not be possible to downsize the patio.

Mr. Kalinowski suggested the pool be rotated and the pole barn be smaller. The area would work with a revision of the plans.

Mr. Jimenez asked if Mr. Smith would have to come back for a variance if he made it less than 10' and suggested coming back with a pool redesign.

Mr. Balcerzak said health department code, not building department.

Mr. Smith asked if he tweaked the plans, does he need to get them approved?

Mr. Kwiek mentioned that if 20' can be made for the garage, Mr. Smith would not need to return.

Mr. Smith would have to show the new plans to the Building Dept.

No one spoke for or against the variance.

Mr. Carey made the motion for Appeals Case #1484 for Michael Smith of 1710 Girdle Road, Elma, NY, who is requesting a ten (10) foot side set back to construct a garage from the required twenty (20) feet. §144-98 C4, Residential B to be denied.

1. It would have a detrimental effect on the neighborhood.
2. The benefit can be achieved by other means or through redesign. Possibly a smaller garage or a pool house with a patio instead of a second garage.
3. The requested variance of 10' instead of 20' is substantial.
4. It would hurt the physicality of the neighbor. The pole barn would not fit into the neighborhood and probably would not be welcomed by neighbors.
5. The alleged difficulty is self-created. Design must be in the limits of the lot.

Second: Mr. Schafer

Yes: 5. Nays: 0

Denied

Appeals Case #1485 for Adam Matuszewski of 70 Woodside Drive, Elma, NY, who is requesting a variance to replace an existing garage, currently less than ten (10) feet from property line. §144-98 C4, Residential B.

Mr. Matuszewski's current garage is less than 10' from the property line. He would be taking down the existing, and rebuilding would be the same width but deeper. It would be similar to a neighbor, in an "L" shaped garage. The existing garage is in need of repair and this would be a good time to replace it.

Mr. Kwiek noticed all the neighbors' homes are deeper than the garage.

Mr. Matuszewski replied that Woodside Drive is trying to update the properties, and he is trying to improve his. He mentioned he had a 22' setback. The garage he has does not fit modern-sized cars.

Mr. Kwiek said it would make his house consistent with his neighbors.

Mr. Matuszewski answered that his garage goes back 48'. Mr. Matuszewski answered yes.

Mr. Jimenez asked if he had talked with his neighbors.

Mr. Matuszewski replied that the neighbors to the right said it would give them privacy and block the wind to their pool area. Mr. Matuszewski also wants to create a privacy area for himself.

Mr. Carey questioned that the back corner of the current garage is 8.97'. If he went back to the 48', what would the back corner measurement be?

Mr. Matuszewski said the back corner was closer to 10'. The front corner is 8.58', so he would be gaining to be at least 9' when he gets to the back corner.

Mr. Schafer asked Mr. Matuszewski would be demolishing the existing garage. If he were adding 26' to the existing 22 total 48' – same width 21'?

Mr. Matuszewski replied Yes.

No one spoke for or against the variance.

Mr. Schafer made the motion for Appeals Case #1485 for Adam Matuszewski of 70 Woodside Drive, Elma, NY, who is requesting a variance to replace an existing garage, currently less than ten (10) feet from property line. §144-98 C4, Residential B to be approved.

1. The request does not produce an undesirable change to the neighborhood.
2. The request could not be achieved by any other means.
3. The request is not substantial since it is an add-on to the existing garage.
4. The request would not have an adverse physical or environmental impact on the neighborhood since the garage would extend back and nothing is being paved.
5. It is self-created, not a hardship.

Second: Mr. Kalinowski

Yes: 5. Nays: 0

Approved.

Appeals Case #1486 for Mike Ehlers of 831 Transit Road, Elma, NY, who is requesting a variance for a side yard setback of 9.9 feet for an added garage and a non-conforming side setback for a porch. §144-99 C4, Residential C.

Jim Bammel, architect for Mr. Ehlers, described that the patio is for shade and would be 18' setback. A single-car garage would be added. Currently, 23' tapers to the left. There is an 11' front setback. The garage is 24' deep. Aware of the neighbor's complaint of drainage and showed the board the drainage plan.

Mr. Carey asked when the property was bought.

Mr. Ehlers replied one month ago; the house was built this year.

Mr. Carey asked if it is a new built, why change the code? An add-on would require a variance.

Mr. Ehlers replied that when it was built, it was not centered on the lot.

Mr. Carey asked what the hardship is of needing an extra garage?

Mr. Ehler replied for storage. Mr. Carey replied that it was not a hardship.

Mr. Bammel replied that it was the only area to build.

Mr. Ehlers mentioned the driveway parking space goes beyond the width of the plans of the new garage. Mr. Bammel added that the addition will not go past 12' of that point.

Mr. Carey said the back patio would be 19' and asked why that could not be made a foot shorter.

Mr. Jimenez read a letter of concern from Mr. Clarence Schoenl of 811 Transit Road.

Mr. Ehlers replied that the drainage mentioned in the letter has been addressed. The garage is next to Mr. Schoenl's garage, it would not obstruct the view.

Mr. Jimenez asked about the depth of the garage. Mr. Ehlers replied it would be 20'.

Mr. Kwiek asked if machines or any vehicles can get behind the house with the new design.

Mr. Ehlers replied that the north side would give an entrance.

Mr. Schafer asked Mr. Ehlers if he had built the house.

Mr. Ehlers replied that he bought it from the builders about a month ago.

Mr. Bammel added that the home was advertised as a two-car garage. Mr. Ehlers' cars do not fit in the existing garage.

Mr. Schafer noted that the variance was asking because they wanted more. Asking the board and town to change because the resident wants more storage space is difficult. This is a self-created hardship.

Mr. Kalinowski mentioned it was already denied other appeals with less variance. Code is the code. A letter from a displeased neighbor and other denied appeals that mirror this, does not help his case.

Mr. Kwiek said he cannot see another way.

No one spoke for or against the variance.

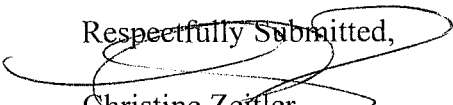
Mr. Kalinowski made the motion for Appeals Case Appeals Case #1486 for Mike Ehlers of 831 Transit Road, Elma, NY, who is requesting a variance for a side yard setback of 9.9 feet for an added garage and a non-conforming side setback for a porch. §144-99 C4, Residential C has been denied.

- 1. An undesirable change would be known.
- 2. The request could not be achieved by any other means or a redesign. Not sure, it may just be more costly.
- 3. The request is a substantial setback to code.
- 4. The request would not have an adverse physical or environmental of the neighborhood since the garage would extend back.
- 5. It is self-created hardship.

Second: Mr. Schafer Yes: 5. Nays: 0 Denied

Mr. Kwiek made the motion to approve the minutes for 05/06/2025.
Second by Mr. Jimenez Yes 5. Nays: 0

Mr. Jimenez made the motion at 9:18 PM to end the meeting.
Second by Mr. Kwiek. Yes: 5 Nays: 0.

Respectfully Submitted,

Christine Zeitler
Zoning Board Secretary